



Steven W. Troxler
Commissioner

**North Carolina Department of Agriculture
and Consumer Services**
Veterinary Division

Joseph W. Reardon
Assistant Commissioner
for Consumer Protection

Douglas Meckes, DVM
State Veterinarian

January 15, 2021

Christy Morton
Owner
Carolina Doggie Playland
3111 S. Tryon Street
Charlotte, North Carolina 28217

NOTICE OF CIVIL PENALTY

Re: CIVIL PENALTY ASSESSMENT for VIOLATION of TITLE 02 N.C. ADMINISTRATIVE CODE ("NCAC") CHAPTER 52J SECTIONS .0102(1) – (3); .0204(e); and .0210(c).

AWS-CP-2021-2

**Facility: Carolina Doggie Playland
License #10617**

Dear Ms. Morton:

Pursuant to N.C. General Statute § 19A-40, I am issuing this notice that you individually and d/b/a Carolina Doggie Playland is hereby assessed a civil penalty of \$2,050.00 as provided in the enclosed Notice of Violation.

With regard to the civil penalty, within 60 days from the date of receipt, you must do one of the following:

1. Pay the civil penalty assessment; or
2. File a written petition for a contested case hearing with the N.C. Office of Administrative Hearings to appeal the penalty assessment.

Pursuant to N.C. General Statute § 150B-22, either party to a dispute may initiate informal settlement negotiations at any time. To negotiate a settlement of this assessment, you may contact me by telephone at (919) 707-3280. Settlement offers do not extend the 60-day deadline for payment or filing of a contested case petition.

Additional information about your options is provided below:

PAYMENT

To pay the penalty, please send your payment by check or money order made payable to the North Carolina Department of Agriculture and Consumer Services to:

North Carolina Department of Agriculture and Consumer Services
Dr. Patricia Norris
Director, Animal Welfare Section
1030 Mail Service Center
Raleigh, NC 27699-1030

APPEAL

If you file a contested case petition, it must be in writing and in the form prescribed by N.C.G.S. § 150B-23. The petition must be filed with the N.C. Office of Administrative Hearings ("OAH") within 60 days of your receipt of this document. Additionally, the petition must be accompanied by a filing fee of twenty dollars (\$20.00). Payment can be made by cash, money order, certified check or check drawn on an attorney's trust account. Make checks payable to: Office of Administrative Hearings. File the petition and one copy with:

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714

Any questions about filing a petition may be directed to the Clerk of OAH by telephone at 919-431-3000.

You must serve NCDA&CS by mailing a copy of the petition to:

Ms. Tina Hlabse
North Carolina Department of Agriculture and Consumer Services
Registered Agent and General Counsel
1001 Mail Service Center
Raleigh, NC 27699-1001

Payment of the penalty will not foreclose further enforcement action against you for any new violation. If the violations which resulted in the assessment are of a continuing nature, NCDA&CS reserves the right to assess additional civil penalties in the future or take other enforcement action against you.

Your attention to this matter is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia Norris, DVM, MS".

Patricia Norris, DVM, MS
Director, Animal Welfare Section

Attachment: Notice of Violations, Assessment of Civil Penalty

cc: R. Douglas Meckes, DVM, State Veterinarian
Tina Hlabse, General Counsel, NCDA&CS
Joe Reardon, Assistant Commissioner, NCDA&CS
Christopher R. McLennan, Assistant Attorney General

STATE OF NORTH CAROLINA
COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT
OF AGRICULTURE AND CONSUMER
SERVICES, VETERINARY DIVISION
ANIMAL WELFARE SECTION

| | | |
|--------------------------|---|--|
| IN THE MATTER OF |) | NOTICE of VIOLATIONS and |
| |) | ASSESSMENT of CIVIL PENALTY |
| CHRISTY MORTON |) | for VIOLATIONS of TITLE 02 N.C. |
| OWNER OF |) | ADMINISTRATIVE CODE CHAPTER |
| CAROLINA DOGGIE PLAYLAND |) | 52J SECTIONS .0102(1) – (3); .0204(e); |
| |) | and .0210(c). |

Acting pursuant to N.C. General Statute § 19A-40, Dr. Patricia Norris, Director, Animal Welfare Section ("AWS"), North Carolina Department of Agriculture and Consumer Services ("NCDA&CS") makes the following:

FINDINGS OF FACT

1. At all times pertinent to this matter, Carolina Doggie Playland ("the kennel") was a boarding kennel, licensed pursuant to N.C. General Statute ("NCGS") § 19A-28.
2. On December 8, 2020, AWS received a complaint concerning the care of the animals at the kennel. AWS initiated an investigation based on the information contained in the complaint. The investigation centered on possible violation(s) of the N.C. Animal Welfare Act ("AWA") as these statutes and associated regulations are the extent of the jurisdiction of AWS.
3. On December 10, 2020, AWS Animal Health Technician Jay Blatche ("Inspector Blatche") conducted an unannounced site visit as part of the complaint investigation. The December 10, 2020 site visit revealed the following:
 - a. 44 dogs were housed in the play area with only 2 supervising employees monitoring the dogs in violation of 02 NCAC 52J .0204(e);
 - b. Inspector Blatche directed the kennel employees to immediately correct the dog to supervising employee ratio. Despite this directive, the ratio remained in violation during the entire site visit;
 - c. When Inspector Blatche asked the kennel staff to provide the records for the dog named Rizzo that had been boarding at the kennel. The staff recalled that this dog had been staying at the kennel and had not eaten or drank for 4 days before being taken to the veterinary hospital. Rizzo then returned to the kennel for a few more days. The staff could not locate any information concerning this dog. The kennel did not have the intake and owner information required by 02 NCAC 52J .0102(1), the animal description information required by 02 NCAC 52J .0102(2), or the documentation of the veterinary care provided to animal during their boarding stay as required by 02 NCAC 52J .0102(3);
 - d. During prior Facility Compliance Inspections ("FCI"), the kennel owner had informed Inspector Blatche that the kennel did not keep a medication log because the kennel does not administer medications to boarding animals. During the December 10, 2020 site visit, when Inspector Blatche asked to see the medication log, the staff replied that no such log was kept as the owner typically was the person who administered the medications to the animals;
 - e. When Inspector Blatche asked the kennel staff to show him where the medications were stored, the staff showed him to a room that had not been inspected during the prior FCIs as the kennel owner

had stated that room was only used for her personal dogs and storage. Inspector Blatche noted various prescription medications in a canister. No medication log was present with the medications;

f. One of the medications in the canister was labeled for administration to a dog named Murphy that was currently boarding at the kennel. A review of the kennel records for Murphy showed there was no documentation of the administration of medication as required by 02 NCAC 52J .0102(3); and

g. A review of the kennel records for 60 days prior to the December 10, 2020 site visit showed no documentation of medications being administered to animals boarding at the kennel.

4. On January 7, 2021, Inspector Blatche returned to the kennel for an unannounced follow-up site visit as part of the complaint investigation. The kennel owner was present during this site visit and the following information was discovered:

a. The kennel owner was aware of the dog named Rizzo and that the dog had returned to the kennel after being treated at the veterinary hospital. When asked by Inspector Blatche if Rizzo was given medication during her stay at kennel, the kennel owner replied that Rizzo was not administered any medication while boarding;

b. When Inspector Blatche asked about the dog named Murphy boarding during the December 10, 2020 site visit and the medication that was to have been administered to him, the kennel owner replied that no dog named Murphy was boarding on that day. A review of kennel records during the January 7, 2021 site visit showed that Murphy was boarding at the time of the December 10, 2020 site visit but there was no documentation of medications administered in violation of 02 NCAC 52J .0102(3); and

c. A medication log starting with the date 1/4/2021 was present. Inspector Blatche noted that a medication entry was blank for 1/7/2021. When asked about this, the kennel owner replied that she could not remember which medication was to be administered at that time. Inspector Blatche noted that the medications for this animal were in a day-by-day pill box with no identification of the medication or the dosage of the medication within the container.

5. On January 7, 2021, Inspector Blatche spoke with an administrator of the veterinary hospital that treated Rizzo. He stated that Rizzo arrived very weak and dehydrated. He stated that Rizzo was released back to the kennel with explicit directions for medication to be administered twice daily.

6. On January 8, 2021, Inspector Blatche spoke with Rizzo's owner. She knew that Rizzo had been taken to the veterinary hospital for treatment and she understood that Rizzo was so weak that she collapsed as she entered the veterinary hospital. Rizzo's owner stated that Rizzo has been on treatment for a low thyroid condition with a medication called thyroxine which must be given twice daily. Rizzo's owner stated that Rizzo was on this medication when she went to the kennel and that the kennel knew to administer the medication while Rizzo was boarding.

7. A review of the Facility Compliance Inspection reports for this kennel show that the kennel was cited during the October 16, 2019 inspection and again during the November 25, 2019 inspection for violation of 02 NCAC .0204(e).

CONCLUSIONS

As a result of this investigation, AWS concludes that the kennel, either by act or omission, violated the following provisions:

02 NCAC 52J .102(1) for failing to maintain records showing the name and address of the owner or person responsible for the dog named Rizzo;

02 NCAC 52J .0102(2) for failing to maintain records showing the description of the animal including breed, sex, age and color markings for the dog named Rizzo;

02 NCAC 52J .0102(3) for failing to maintain records of veterinary care provided for the dog named Murphy;

02 NCAC 52J .0204(e) for failing have at least one person supervising each 10 dogs housed within the play area on December 10, 2020 and again on January 7, 2021; and

02 NCAC 52J .0210(c) for failure to provide veterinary care for the dog named Rizzo.

CIVIL PENALTY

As required by N.C. General Statute § 19A-40, in determining the amount of the civil penalty, I have considered the degree and extent of harm caused by the violations listed above.

Accordingly, Christy Morton as owner and operator of Carolina Doggie Playland is hereby assessed a civil penalty for the following violations:

\$200.00 for violation of 02 NCAC 52J .102(1) for failing to maintain records showing the name and address of the owner or person responsible for the dog named Rizzo;

\$100.00 for violation of 02 NCAC 52J .0102(2) for failing to maintain records showing the description of the animal including breed, sex, age and color markings for the dog named Rizzo;

\$250.00 for violation of 02 NCAC 52J .0102(3) for failing to maintain records of veterinary care provided for Rizzo and Murphy;

\$1,000.00 for 2 violations (\$500.00 per violation) of 02 NCAC 52J .0204(e) for failing have at least one person supervising each 10 dogs housed within the play area on December 10, 2020 and again on January 7, 2021; and

\$500.00 for violation of 02 NCAC 52J .0210(c) for failure to provide veterinary care for the dog named Rizzo

\$2,050.00 TOTAL AMOUNT ASSESSED

(See Appendix for text of referenced General Statutes and Administrative Code)

1/15/2021

Date

Patricia Norris DVM, MS

Patricia Norris, DVM, MS

Director, Animal Welfare Section

North Carolina Department of

Agriculture & Consumer Services

Appendix

REFERENCED LAWS AND REGULATIONS

§ 19A-28. License required for public auction or boarding kennel.

No person shall operate a public auction or a boarding kennel unless a license to operate such establishment shall have been granted by the Director. Application for such license shall be made in the manner provided by the Director. The license period shall be the fiscal year and the license fee shall be seventy-five dollars (\$75.00) for each license period or part thereof beginning with the first day of the fiscal year. (1977, 2nd Sess., c. 1217, s. 9; 1987, c. 827, s. 65; 1989, c. 544, s. 18; 2011-145, s. 31.5(b).)

§ 19A-30. Refusal, suspension or revocation of certificate or license.

The Director may refuse to issue or renew or may suspend or revoke a certificate of registration for any animal shelter or a license for any public auction, kennel, pet shop, or dealer, if after an impartial investigation as provided in this Article he determines that any one or more of the following grounds apply:

- (1) Material misstatement in the application for the original certificate of registration or license or in the application for any renewal under this Article;
- (2) Willful disregard or violation of this Article or any rules issued pursuant thereto;
- (3) Failure to provide adequate housing facilities and/or primary enclosures for the purposes of this Article, or if the feeding, watering, sanitizing and housing practices at the animal shelter, public auction, pet shop, or kennel are not consistent with the intent of this Article or the rules adopted under this Article;
- (4) Allowing one's license under this Article to be used by an unlicensed person;
- (5) Conviction of any crime an essential element of which is misstatement, fraud, or dishonesty, or conviction of any felony;
- (6) Making substantial misrepresentations or false promises of a character likely to influence, persuade, or induce in connection with the business of a public auction, commercial kennel, pet shop, or dealer;
- (7) Pursuing a continued course of misrepresentation of or making false promises through advertising, salesmen, agents, or otherwise in connection with the business to be licensed;
- (8) Failure to possess the necessary qualifications or to meet the requirements of this Article for the issuance or holding of a certificate of registration or license.

The Director shall, before refusing to issue or renew and before suspension or revocation of a certificate of registration or a license, give to the applicant or holder thereof a written notice containing a statement indicating in what respects the applicant or holder has failed to satisfy the requirements for the holding of a certificate of registration or a license. If a certificate of registration or a license is suspended or revoked under the provisions hereof, the holder shall have five days from such suspension or revocation to surrender all certificates of registration or licenses issued thereunder to the Director or his authorized representative.

A person to whom a certificate of registration or a license is denied, suspended, or revoked by the Director may contest the action by filing a petition under G.S. 150B-23 within five days after the denial, suspension, or revocation.

Any licensee whose license is revoked under the provisions of this Article shall not be eligible to apply for a new license hereunder until one year has elapsed from the date of the order revoking said license or if an appeal is taken from said order of revocation, one year from the date of the order or final

judgment sustaining said revocation. Any person who has been an officer, agent, or employee of a licensee whose license has been revoked or suspended and who is responsible for or participated in the violation upon which the order of suspension or revocation was based, shall not be licensed within the period during which the order of suspension or revocation is in effect.

§ 19A-40. Civil Penalties.

The Director may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Director shall consider the degree and extent of harm caused by the violation. The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

02 NCAC 52J .0102 RECORDS; BOARDING KENNELS

Operators of boarding kennels shall maintain records of all dogs and cats showing the following:

- (1) name and address of owner or person responsible for animal, the date of entry and signature and address of individual to whom animal is released and the date of release;
- (2) description of animal including breed, sex, age and color marking; and
- (3) veterinary care provided while boarded, which shall include date, times, description of medication (including name and dosage) and initials of person administering product or procedure.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. January 1, 2005.

02 NCAC 52J .0204 PRIMARY ENCLOSURES

(e) If more than four dogs are housed in a common area or enclosure, then there must be at least one person supervising each 10 dogs housed within each enclosure or common area.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. January 1, 2005; April 1, 1985.

02 NCAC 52J .0210 VETERINARY CARE

(c) Each dog and cat shall be observed daily by the animal caretaker in charge, or by someone under his direct supervision. Sick or diseased, injured, lame, or blind dogs or cats shall be provided with veterinary care or be euthanized, provided that this shall not affect compliance with any state or local law requiring the holding, for a specified period, of animals suspected of being diseased. If euthanasia is performed at a certified facility, a list of personnel approved to perform euthanasia shall be maintained in a Policy and Procedure Manual as described in 02 NCAC 52J .0800. Diseased or deformed animals shall be sold or adopted only under the policy set forth in the "Program of Veterinary Care." Full written disclosure of the medical condition of the animal shall be provided to the new owner.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. March 23, 2009; January 1, 2005.